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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/963,670	09/27/2001	David R. Dworkin	1875.0790000	8974
28393	7590	10/19/2005	EXAMINER	
STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C. 1100 NEW YORK AVE., N.W. WASHINGTON, DC 20005			SHEPARD, JUSTIN E	
			ART UNIT	PAPER NUMBER
			2617	

DATE MAILED: 10/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/963,670

Applicant(s)

DWORKIN ET AL.

Examiner

Justin E. Shepard

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date: ____.  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>6/17/03</u> .   | 6) <input type="checkbox"/> Other: ____.                                    |

## **DETAILED ACTION**

### ***Specification***

The abstract of the disclosure is objected to because the phrase "clock rate" on line 6 is not the correct phrase to use. It should be replaced with "data transfer rate," or something similar. Correction is required. See MPEP § 608.01(b).

### ***Claim Objections***

Claim 3 is objected to because of the following informalities: The phrase "clock rate" on line 6 is not the correct phrase to use. It should be replaced with "data transfer rate," or something similar. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4-7, 9, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robles in view of Steer.

Referring to claim 1, Robles discloses a system for interleaving MPEG video data with data comprising: a MPEG video source that produces a MPEG video data stream at a clock rate determined by said MPEG video source (column 15, lines 45-49; figure 15), wherein said MPEG video data stream is comprised of MPEG video data packets and null data packets (figure 16A); a media access control device that receives said MPEG video data stream, replaces each of said null data packets with a data frame to

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produce an interleaved MPEG data stream, and transmits said interleaved MPEG data stream (column 16, lines 14-21) at said clock rate determined by said MPEG video source (column 2, lines 43-47; Note: preventing the system from reducing the data rate is interpreted as being equivalent to transmitting at the same data rate as it is received).

Robles does not disclose a system where DOCSIS data is interleaved into an MPEG stream.

Steer discloses a system where DOCSIS data is interleaved into an MPEG stream (column 10, lines 2-4).

At the time of the invention it would have been obvious for one of ordinary skill in the art to use the system disclosed by Robles to interleave DOCSIS data into an MPEG stream as taught by Steer. The motivation would have been that the data being interleaved into the MPEG data stream is IP data, which would be used in DOCSIS transmissions. Also adding the features taught by Steer would allow the system to interrupt certain packets that weren't time sensitive to allow for time sensitive packets to be sent first (Steer: column 2, lines 17-24).

Referring to claim 2, Robles discloses a system of claim 1, further comprising a downstream modulator that receives said interleaved MPEG data stream (column 17, lines 28-34) at said clock rate determined by said MPEG video source (column 2, lines 43-47).

Claims 4, 5, and 6 are rejected on the same grounds as claim 1.

Claim 7 is rejected on the same grounds as claim 2.

Claim 9 is rejected on the same grounds as claim 2.

Claim 10 is rejected on the same grounds as claim 2.

Claims 3 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robles in view of Steer as applied to claims 1, 6, and 7 above, and further in view of Hiroshima.

Referring to claim 3, Robles in view of Steer does not disclose a system of claim 1, wherein said MPEG video source provides said MPEG video data stream at a clock rate less than 13.5 megabytes per second.

Hiroshima discloses a system of claim 1, wherein said MPEG video source provides said MPEG video data stream at a clock rate less than 13.5 megabytes per second (column 7, lines 40-44).

At the time of the invention it would have been obvious for one of ordinary skill in the art to transmit the data at 1.536 Mbps as taught by Hiroshima in the system disclosed by Robles and Steer. The motivation to do this would have been to lower the data transfer rate to allow the data to be transmitted on low bandwidth systems.

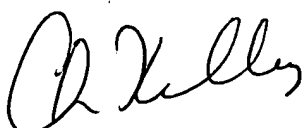
Claim 8 is rejected on the same grounds as claim 3.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin E. Shepard whose telephone number is (571) 272-5967. The examiner can normally be reached on 7:30-5 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on (571) 272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JS

  
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